

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 05-08063

ORDER ON MOTION FOR RELIEF FROM STAY

The relief set forth on the following pages, for a total of 5 pages including this page, is hereby ORDERED.

FILED BY THE COURT
02/20/2008



Entered: 02/21/2008

US Bankruptcy Court Judge
District of South Carolina

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:

Mark Samuel Watson and
Allison Heather Watson,

Debtor(s).

C/A No. 05-08063-DD

Chapter 13

**ORDER ON MOTION FOR RELIEF
FROM STAY**

THIS MATTER is before the Court on JP Morgan Chase Bank's ("Chase") Motion for Relief from Stay ("Motion"). A hearing was held in this matter on February 4, 2008. Mark Samuel Watson and Allison Heather Watson ("Debtors"), Chase, and the Chapter 13 Trustee ("Trustee") appeared by and through counsel. Chase moves for relief from stay for cause pursuant 11 U.S.C. § 362(d)(1).¹ Chase holds a purchase money security interests in a 2000 Chevrolet Silverado (VIN 1GCEC14W9YZ339784) that is in Debtors' possession. Pursuant to Debtors' confirmed plan they are to pay \$827.00 per month to the trustee of which \$205.00 is in payment of Chase's claim for the value of its collateral plus 7% interest. Debtors do not dispute that they are approximately 8 plan payments behind. The Trustee is working with Debtors to cure the plan arrearage. Debtors testified that they are making efforts to catch up the arrearage by making double payments, and expressed the intention to use any tax refund received this year to bring their plan payments current.

Section 362(d)(1) states,

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1).

¹ Further references to the Bankruptcy Code shall be by section number only.

Debtors have had a sporadic payment history. While the Court believes that Debtors are making a sincere effort to work with the Trustee and make this case work, this is not the first time they have fallen behind in their plan payments. The Trustee filed a motion to dismiss for non-payment in January of 2006. Evidently, this delinquency was remedied and the Debtors continued in their case. Now they are approximately 8 months behind in their payments to the Trustee giving rise to a formidable arrearage.

Failure to make plan payments will not always constitute cause under § 362(d)(1), but depending on the circumstances of a specific case it may. *See In re Raymond*, B.R. 819, 822 (Bankr. S.D. Ohio 1989). In *Raymond* a secured creditor, Navistar, argued since “debtors have failed to make all regularly-scheduled monthly payments to the Chapter 13 trustee, cause for relief from stay under § 362(d)(1) of the Bankruptcy Code is established as a matter of law.” *Id.* Based upon the specific facts of that case the Court stated,

[D]ebtors' sporadic post-confirmation payments over the past several months do not rise to the level of "cause" for relief from stay under 11 U.S.C. § 362(d)(1). In contrast to the *Elmore* and *Shahid* cases, where the debtors accumulated large plan arrearages by failing to make numerous post-confirmation payments, here, given the incomplete state of the record, the Court cannot determine the substantiality of debtors' default under their plan. No evidence was presented as to the exact number of plan payments debtors have failed to make. Nor is there evidence establishing the amount of debtors' post-confirmation arrearage. The testimony of Karen Raymond and Michael Kelly, Navistar's Zone Representative, taken together, suggests that debtors have made sporadic payments over the last four (4) months. Yet, as stated above, the size of the arrearage and the amount of debtors' partial payments were not established. Nor did Navistar indicate the sum it was to receive on a monthly basis from the Trustee under the plan. Hence, while the Court is not unsympathetic to Navistar's position -- it clearly has not received the full payments contemplated by the plan over the past several months -- on the record before it the Court is simply unable to assess the substantiality of debtors' default.

Id. While the Court in *Raymond* did not find cause to exist, it did so based on the lack of evidence. In the present case this Court has all the information the *Raymond* court did not. Debtors have missed at least 8 plan payments. Debtors plan payment is \$827.00 per month with \$205.00 going to Chase. Thus, as of the date of the hearing Debtors were at least \$1,640 in arrears, almost 22% of the total amount (\$7,625.00) owned to Chase. The *Raymond* court's statement that it was "not unsympathetic to Navistar's position -- it clearly has not received the full payments contemplated by the plan over the past several months -- on the record before it the Court is simply unable to assess the substantiality of debtors' default" leads this Court to conclude that *Raymond* would have come to a different conclusion had Navistar proven its case.

The Court finds the reasoning of *Raymond* persuasive and in the present case the Court has all the necessary evidence (or admissions) to conclude that Debtors are sufficiently behind in their plan payments to establish cause for relief from stay. Especially since Chase's only source of payments in this case is through the plan. Given the circumstances of this case the Court finds cause under § 362(d)(1). Section 362(d)(1) allows the Court to terminate, annul, modify, or condition the automatic stay.

Given the testimony of the Debtors the Court will not grant relief from stay but conditions the stay as follows. (1) Debtor shall make double (at least \$1,654.00) payments to the Trustee in February 2008, March 2008, and April 2008. (2) Debtors shall pay any funds received from their tax refund (up to an amount that will bring them current – all if necessary) to the Trustee. (3) Regardless of the amount of arrearage that is covered by conditions (1) and (2) above, the Debtors shall be current in their plan

payments by May, 1 2008.² If double payments and their tax refund do not bring Debtors current they shall be responsible for finding other means to bring the case current. If the conditions above are not met then Chase shall be granted relief from the stay imposed by 11 U.S.C. § 362(a) without further notice or hearing upon an affidavit being filed by Chase stating that Debtors have failed to comply with these conditions.

After May 1, 2008 (after the case is made current) Chase shall be granted relief from stay if any plan payment to the Trustee is late by more than fifteen (15) days after the due date. Relief shall be granted without further notice or hearing upon an affidavit being filed by Chase stating that Debtors have failed to comply with this condition. This provision is applicable only in the current calendar year (i.e., through December 31, 2008), after which it shall expire.

AND IT IS SO ORDERED.

Columbia, South Carolina
February 20, 2008

² It should be noted that even though the *Raymond* court did not find cause the order did require the debtors to cure the plan arrearage.